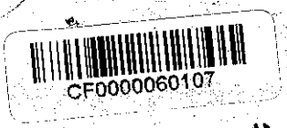
Cr A 3076/98 (2)

XII-189 (Jail) C J.P.R./9-94



APPEAL OF PRISONER

Division Bench (Criminal)

No बन्दी क्रमांक 1452/98 Name लगन सिंह

Father's name चैनराम गोंड

Residence 302 I.P.C. Age - 37 ए

Sentenced to आजीवन कारावास on 18.11.98

Under Section _____ by IV th A.S.J. BSP. (M.P.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement ×

2 Date on which copy received ×

3 Date on which Appeal sent 4.12.98

4 Whether the prisoner wishes to be represented or not. _____

No 1452/98 Name लगन सिंह पि० चैनराम गोंड

Confined in सर्किल Jail बिलासपुर (म.प्र.)

No. _____ Dated 4-12-1998

Forwarded to the रजिस्ट्रार महोदय उच्च न्यायालय जबलपुर (मध्य प्रदेश)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
SUPERINTENDENT,
CIRCLE JAIL BILASPUR (M.P.)
Jail

Date of receipt in _____ Office with in time

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the _____

Date of receipt in Appellate court _____

(P. T. O.)

XI-HC-78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.3076/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and
Hon'ble Mr. Sunil Kumar Sinha, J.

29-1-2007

Mr. R.K. Jain, counsel for the appellant.

Mr. G.K. Beriwal, Deputy Advocate General with Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, Ag.C.J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 18-11-1998 passed by the 4th Additional Sessions Judge, Bilaspur, in Sessions Trial No.519/97, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution is that Amritlal lodged the report Ex.P-8 in Police Station: Pali to the effeat that on 12-10-1997 in the morning he was informed by Kalsi Gond that previous night in between 12 mid night and 1 a.m., Lagan Singh Gond, the accused/appellant herein, has committed the murder of his brother-in-law Lakhan Singh. On receiving this information he along with Up-Sarpanch Samar Singh went to the house of Lakhan Singh and saw that Lakhan Singh's body was lying on the ground, there was injury on head. Receiving this report, the Station House Officer, Police Station: Pali registered the crime under Section 302 of the I.P.C. and left for the scene

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..G.A.3076/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of occurrence. After giving notice Ex.P-6 to the Panchas, he prepared the inquest (Ex.P-7) on the body of Lakhan Singh. The axe in question was seized under Ex.P-3 at the instance of the accused. Plain soil and blood stained soil were seized under Ex.P-4. Clothes of the accused were seized under Ex.P-5. The body of Lakhan Singh was sent for post-mortem examination to Primary Health Centre, Pali under Ex.P-10 where Dr. Pradeep Agrawal (PW-11) conducted post-mortem and prepared the post-mortem report (Ex.P-16).

After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, First Class, Katghora, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned 4th Additional Sessions Judge, Bilaspur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused, examined eleven witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been implicated in a false crime. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced Lagan Singh as aforementioned.

We have heard Mr. R.K. Jain, learned counsel for the appellant and Mr. G.K. Beriwal, learned Deputy Advocate General with Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

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मामला क्रमांक ...G.A.3076/98... **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Jain has not disputed the homicidal death of Lakhan Singh. Moreover, Dr. Pradeep Agrawal (PW-11) who conducted post-mortem on the body of Lakhan Singh has stated that there was an incised wound on the skull in the size of 6 cms. X 2.5 cms. X 3.5 cms., the bone beneath the injury was fractured and brain matter was coming out. There was an incised wound on the right side of the head transversely placed in the size of 5 cms. X 2.5 cms. and the bone beneath the injury was fractured. The brain membrane was ruptured, brain was also ruptured, injuries were ante-mortem in nature caused by hard and sharp object and the cause of death was haemorrhage and shock. The death was homicidal in nature. Apart from this medical evidence, the evidence of Ramkunwar (PW-2), Umabai (PW-7) and Jayanti Bai (PW-8) establishes that the accused attacked the deceased with an axe. Therefore, it is established that the death of Lakhan Singh was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Ramkunwar (PW-2), mother of the deceased and mother-in-law of the accused has stated in his evidence that on the fateful night they were sleeping in the house, the accused and the deceased were sleeping in one room, whereas she was sleeping in another room, on hearing the sound she woke up and saw in the light of burning lamp that the accused was attacking his son with the axe, therefore, she caught hold of the axe when the accused was attempting to assault again and she raised cries, hearing her cries, neighbours came on the spot and the accused was caught. Similar is the evidence of Umabai (PW-7) who was sleeping with Ramkunwar (PW-2)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and who has corroborated the evidence of Ramkunwar. Jayanti Bai (PW-8) was also sleeping with Ramkunwar (PW-2), she is daughter of the accused, she has also stated in her evidence that her father attacked her maternal uncle and her maternal grand-mother caught the axe when the accused was attacking her maternal uncle.

Learned counsel for the accused/appellant argued that the evidence of these three witnesses shows that at the time of attack they were sleeping, they woke up only after hearing the sound of the attack, therefore, they had witnessed the accused in actually assaulting the deceased.

To some extent the argument advanced by learned counsel for the appellant is correct, but the fact remains that after the assault when these witnesses woke up, they saw that the accused was holding axe in his hand stained with blood, when he was attempting to assault Lakhan again, Ramkunwar (PW-2) was able to hold the axe, therefore, the accused was not able to make the assault again. Ramkunwar also raised cries, hearing her cries, neighbours came and the accused was caught on the spot, he was not able to run away. Therefore, the accused was sleeping with the deceased, he was caught while having the weapon of offence in his hand and trying to attack again. The accused has not explained anything about the said conduct, on the contrary, he has stated that he has been falsely implicated in the crime, witnesses have implicated him in the crime falsely. There is no reason to disbelieve these three witnesses, as the accused was caught red handed in the room where the offence was committed. Daughter of the accused has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

also supported the prosecution case. The evidence of these witnesses lends support form the fact that when the accused was caught on the spot, on enquiry, he made extra judicial confession before Dulrawa (PW-3), Manharan Lal (PW-4), Samar Singh (PW-5) & Amrit Lal (PW-10) that he attacked the deceased with axe, that extra judicial confession was voluntary, prompt and was true for the reason that he was immediately caught on the spot and thereafter, the extra judicial confession made by him before these witnesses was supported by the circumstances on the spot. Therefore, from the evidence of eyewitnesses namely, Ramkunwar (PW-2), Umabai (PW-7) & Jayanti Bai (PW-8) and the extra judicial confession made before the above witnesses namely, Dulrawa (PW-3), Manharan Lal (PW-4), Samar Singh (PW-5) & Amrit Lal (PW-10), it is established that the accused was the author of the crime in question. The trial Court has not committed any illegality or infirmity in convicting and sentencing the accused.

Learned counsel for the accused/appellant submitted that the prosecution has not been able to prove motive of the crime as also the intention.

But we do not find any substance in the argument advanced by learned counsel for the reason that it is difficult to establish motive in each case, when there is cogent, clear and clinching evidence to establish involvement of the accused, even if motive is not established, the accused can be convicted.

As far as intention is concerned, the accused used deadly weapon like axe while assaulting the deceased on his head i.e. vital part of the body and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	on account of the assault made, skull bone of the deceased was fractured and brain matter came out. Therefore, above facts are suggestive of the fact that the intention of the accused to cause the death of Lakhan Singh was writ large. In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed. **Sd/-** **Acting Chief Justice** **Sd/-** **SUNIL KUMAR SINHA** **Judge**	
Soma		

P.T.O.

8.2.08